

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

ORIGINAL  
FILED

RECEIVED

MAY 11 1992

Federal Communications Commission  
Office of the Secretary

CC Docket No. 92-26

In the Matter of:

Amendments of Rules Governing  
Procedures to be Followed When  
Formal Complaints Are Filed Against  
Common Carriers

**REPLY OF ALLNET COMMUNICATION SERVICES ON  
PROPOSED RULE CHANGES**

Allnet Communication Services, Inc. (Allnet) submits this reply to comments on the Commission's proposal to revise its formal complaint rules and regulations in order to promote more efficient use of Commission resources and reduce the ever-growing backlog of formal complaints.

Although all commenters welcomed the proposed changes, there was consistent recognition that the proposed rule changes will have little impact on eliminating the existing backlog or, by themselves, have any significant impact on the speed of processing complaints filed in the future.<sup>1</sup> In these reply comments, Allnet replies to some new proposals set forth by some commenting parties which were not addressed in the NPRM.

**I. Some Counter-proposals Would Be Counterproductive and Be Inconsistent With the Objectives of this Proceeding**

Some of the counter-proposals of some parties would result in increased workloads for the Commission staff, and create more work for both parties to a

<sup>1</sup>See, for example, Comments of FCBA at 3, US West at 2, MCI at 2, Sprint at 2-3, AT&T at 2..

No. of Copies rec'd  
List A B C D E

2 + 7

complaint proceeding.

For example, Southwestern Bell proposes that confidential responses to interrogatory requests be forwarded to the Commission, rather than to the opposing counsel. Southwestern Bell states that “[t]he Commission should not allow the document to be seen by the opposing counsel unless necessary to a prima facie case or defense.”<sup>2</sup> This proposal would place the Commission right back in the middle of these discovery disputes -- resulting in FOIA actions to obtain release of the data. Similarly, Bell Atlantic argues that the Commission should embroil itself in the threshold question of whether interrogatories are necessary to determine liability.<sup>3</sup> However, even the Federal Rules of Civil procedure provide for interrogatories and discovery when a motion for summary judgment is pending.<sup>4</sup> Both of these proposals should be rejected -- they both will simply increase the burden of work on the Commission staff and further slow down the processing of complaints.

Southwestern Bell also proposes that any price cap related complaint be summarily dismissed.<sup>5</sup> There is no basis for setting special rules regarding price cap-related complaints. Moreover, the standards for determining the lawfulness of a rate is the statutory requirements of the Communications Act. As long as there are material facts in dispute regarding a price cap-related (or any

---

<sup>2</sup>Southwestern Bell at 4.

<sup>3</sup>Bell Atlantic at 2.

<sup>4</sup>Rule 56 of the Federal Rules of Civil Procedure.

<sup>5</sup>Southwestern Bell at 2.

other type of complaint), summary dismissal would be inappropriate.

Most parties reject the idea of oral rulings. However, Southwestern Bell endorses them.<sup>6</sup> Oral rulings, without a written opinion explaining the basis for such ruling, deny parties their rights under the APA requiring that a decision be a reasoned one, providing a record for appellate review. 5 USC §701 and §706. As US West points out: “Oral orders do not provide a proper record and invariably lead to disputes as to what was actually ordered if not promptly memorialized.”<sup>7</sup>

GTE urges that more motions be encouraged, rather than less. GTE states that “the Commission should encourage the filing of motions to resolve all or part of the complaint and should act on those motion expeditiously.”<sup>8</sup> This proposal should also be rejected. Instead of relying upon the filing of additional motions on motions, GTE should simply write more thorough arguments in its answer. This will eliminate the need for any additional motions, if properly done.

GTE also proposes that discovery be allowed for damages, even when damages have not yet been litigated.<sup>9</sup> This proposal, which is completely contrary to the Commission’s objective of simplifying discovery, should be rejected. Contrary to GTE’s claim, Allnet sees no value in allowing such premature discovery “to properly assess its worth”<sup>10</sup> -- particularly given that no liability has

---

<sup>6</sup>Southwestern Bell at 2.

<sup>7</sup>US West at 4.

<sup>8</sup>GTE at 2-3.

<sup>9</sup>GTE at 5.

<sup>10</sup>GTE at 5.

yet been found. However, if GTE believes as a defendant that it is liable -- before being determined to be so by the Commission -- it should simply correct the problem in full, settling on the basis of 100% damages for both the complainant and all other affected parties. Most, if not all of the time, damages are simply in the form of adjustment to rates previously assessed. Thus, most of the time, GTE has all of the information it needs to determine how much it owes. Most parties supported the separation of discovery for liability and for damages.

Ameritech proposes expanding the current discovery practice to include admissions of fact.<sup>11</sup> This is also an unnecessary source of additional paper flow. Specifically, the existing pleading practice (i.e., complaint, answers, and replies) already provide an opportunity for the equivalent of “admissions of facts.” Of course, if more than interrogatories are required, a party is always free to ask for additional forms of discovery through a motion under the existing and proposed rules.

## **II. Some Proposals Are Particularly Helpful**

Allnet strongly supports the Commission’s and, in turn, the FCBA’s proposal to do away with replies in motion situations. As noted by the FCBA,

replies should not be necessary in the vast preponderance of motions. The issues in motions tend to be limited and straightforward, and defendants should not need to reply for the issue to be properly joined and briefed. In fact, the opposition itself is in the nature of a reply, since it is the third pleading in the process, the motion being filed in response to the complaint. Further, by prohibiting replies, the Commission will be discouraging gamesmanship, since defendant will have to anticipate and refute potential defenses in their motions, rather than trying to set a trap

---

<sup>11</sup>Ameritech at 7.

for the complainant.<sup>12</sup>

Another helpful suggestion was made by the DC PSC. It suggested that a required set of briefs be filed after discovery is completed, where such briefs reflect the outcome of the discovery.<sup>13</sup> Allnet has proposed that such additional set of briefs be filed six months after the complaint's filing date.<sup>14</sup>

### **III. Conclusion**

For the reasons set forth herein and in its comments, the proposed rules of the Commission regarding complaint proceedings with the modifications proposed by Allnet, should be adopted.

Respectfully submitted,  
ALLNET COMMUNICATION SERVICES, INC



Roy L. Morris  
Deputy General Counsel  
1990 M Street, NW, Suite 500  
Washington, D.C. 20036  
(202) 293-0593

Dated: May 11, 1992

---

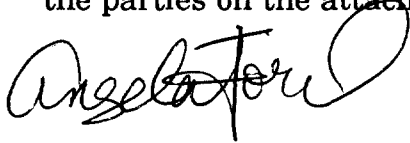
<sup>12</sup>FCBA at 7.

<sup>13</sup>DC PSC at 2-3.

<sup>14</sup>See, Allnet Comments at Attachment A, xiii.

**Certificate of Service**

I, Angela Ford, hereby certify that I have caused to be served on this date, May 11, 1992 a true copy of the forgoing Allnet Reply by postage-prepaid first class mail to the parties on the attached service list.

A handwritten signature in cursive script that reads "Angela Ford". The signature is written in black ink and is positioned to the left of the date.

May 11, 1992

J.M. Lee & M. Lowe  
Bell Atlantic  
1710 H Street, NW  
Washington, D.C. 20006

E. Niehoff & P. Lee  
NYNEX  
120 Bloomingdale Road  
White Plains, NY 10605

F. Berry & D. Condit  
AT&T  
295 N. Maple Avenue  
Basking Ridge, NJ 07920

John D. Lane  
Fed'l Comm. Bar Association  
1150 Connecticut Avenue, NW  
Washington, D.C. 20036

L. Kestenbaum & P. Whitten  
Sprint Communications Co.  
1850 M Street, NW 11th Flr  
Washington, D.C. 20036

Carol Sulkes-VP, Reg. Policy  
Central Telephone Co.  
8745 Higgins Road  
Chicago, IL 60631

J. Blask & Daniel Smith  
Gurman, Kurtis, Blask, et.al.  
1400 16th Street, NW #500  
Washington, D.C. 20036

Gail Polivy  
GTE Service Corporation  
1850 M Street, NW #1200  
Washington, D.C. 20036

F. Krogh & D. Elardo  
MCI  
1801 Pennsylvania Ave., NW  
Washington, D.C. 20006

A. Kramer & H. Hall  
Keck, Mahin & Cate  
1201 N.Y. Avenue, NW-Pthse  
Washington, D.C. 20005

J. Tuthill, N. Wolf  
Pacific and Nevada Bell  
140 New Montg. St, #1523  
San Francisco, CA 94105

James, Seiver & Westfall  
Cole, Raywid & Braverman  
1919 Penn. Ave., NW #200  
Washington, D.C. 20006

D. Avery & P. Wolfe  
PSC of Dist. of Columbia  
450 5th Street, NW  
Washington, D.C. 20001

R. Hoegle & T. Fitzgibbon  
Carter, Ledyard & Milburn  
1350 I Street, NW  
Washington, D.C. 20005

D. Dupre, & R. Hartgrove  
Southwestern Bell Tele. Co.  
1010 Pine St., Rm. 2114  
St. Louis, MO 63101

D. Wittenstein  
Dow, Lohnes & Albertson  
1255 23rd Street, NW #500  
Washington, D.C. 20037

Michael J. Hirrel  
1300 New York Ave., NW  
#200-E  
Washington, D.C. 20005

Lisa Manning  
Williams Telecommunications  
1 Wms. Ctr #3600 POB 2400  
Tulsa, OK 74102

L. Sarjeant, R. Coleman  
US West  
1020 19th Street, NW #700  
Washington, D.C. 20036